

When a water utility company purchases a chemical that will be used in the water treatment process, it owes Use Tax on the purchase price of the chemical, even though the water in the chemical will be transferred to the customer. (This is a GIL.)

November 4, 2003

Dear Xxxxx:

This letter is in response to your letters dated April 18, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please accept this letter as a request for ruling regarding the applicability of the Retailers' Occupation Tax to our client's purchases of various water treatment chemicals. Our client is a privately owned water utility located in the State of Illinois that purifies and treats water for ultimate distribution and sale to customers in the State. Water treatment chemicals can be purchased in wet or dry form. When purchased in wet form the chemical is received in a wet solution that may be 50% water and 50% chemical. This wet solution of 50% water and 50% chemical is entirely added to the water to be treated. The water of this wet solution remains a part of the treated water ultimately sold to customers in Illinois while the chemical does not remain part of the treated water. If we presume that the water treatment chemical is taxable under the ROT is it possible to exempt the water portion of the purchase price of the wet solution, in that it is purchased for resale being that it remains part of the treated water that is ultimately sold to customers in Illinois?

Your clarification and quickest attention to this issue is greatly appreciated. If you have any questions concerning the above please contact me.

Please accept this letter as a request for ruling regarding the applicability of the Retailers' Occupation Tax to our client's purchases of various water treatment

chemicals. Our client is a privately owned water utility located in the State of Illinois that purifies and treats water for ultimate distribution and sale to customers in the State. In the course of operations our client purchases various chemicals for use in the purification and treatment of the water. Many of these chemicals remain in the water ultimately sold to a customer in Illinois. As such, we request clarification that the purchase of said chemicals can be made tax free under the Sale for Resale exemption of the Retailers' Occupation Tax which states in part as follows:

Illinois Regulation, 86 Ill. Adm. Code 130.120

The tax does not apply to receipts from sales:

- c) of tangible personal property for purposes of resale in any form as tangible personal property, provided that the purchaser has an active registration number or active resale number from the Department and gives such number to the vendor in connection with certifying to the vendor that the sale to such purchaser is nontaxable on the ground of being a sale for resale;

In the course of our research we have not been able to come to a definitive opinion on this issue. In fact, a determination seems to hinge on whether or not the sale of water by a water utility is deemed to be the sale of tangible personal property and thus subject to the Retailers' Occupation Tax or the sale of a service not subject to the purview of the ROT. **Private Letter Ruling, ST 92-0073-PLR** appears to address this issue by stating in part the following:

Please be advised that Retailers' Occupation Tax is not incurred on the sale of water by a public utility. Consequently, the Sale for Resale exemption contained in the Retailers' Occupation Tax Act is not applicable.

As a public utility, you should pay use tax to your supplier when purchasing, tangible personal property that will be transferred to you customers as an incident of the sale of service.

Your clarification on the taxability of the purchase of chemicals for the treatment of water by a water utility that remain in the water ultimately sold to customers in Illinois is greatly appreciated. We are not comfortable relying on the letter ruling referenced above. If you have any questions concerning the above please contact me. Your quickest attention to this matter is greatly appreciated.

As you have noted, Retailers' Occupation Tax is not incurred on the sale of water by a public utility. As a result, the sale for resale exemption from sales tax is not applicable. When a water utility company purchases chemicals that will be used in the water treatment process, it owes Use Tax on the purchase price of the chemical. The fact that the chemical purchased includes water as an ingredient, and that water will ultimately be sold to a customer, does not change that.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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